the course that the defendants are alleged to intend, and to determine whether they are authorized to follow that course it is not enough to refer to the general right of a holder of checks to present them but it is necessary to consider whether the connection of checks and presenting them in a body for the purpose of breaking down the petitioner's business as now conducted is justified by the ulterior purpose in view.

"If this were a case of competition in private business it would be hard to admit the justification of self interest considering the now current opinions as to public policy expressed in statutes and decisions. But this is not a private business. The policy of the Federal Reserve Banks is governed by the policy of the United States with regard to them and to these relatively feeble competitors. We do not need aid from the debates upon the statute under which the Reserve Banks exist to assume that the United States did not intend by that statute to sanction this sort of warfare upon legitimate creations of the States."

Constitutional Law—Right to Public Trial in Prosecution for Seduction.—In State *v.* Jordan, 196 Pac. 565, the Supreme Court of Utah held that in view of Const. art. 1, sec. 12, as to the right to a public trial, in a prosecution for having carnal knowledge of a female under 18 the ruling of the trial court excluding not only the public generally but every friend and relative of the accused, including his mother, although the prosecutrix and her father were permitted to stay in the courtroom, was a denial of the right to "public trial," not justified by a statute apparently vesting the court with discretion in such a case.

The court said in part: We cannot conceive of a case, no matter how revolting and disgusting the details of the testimony given, in which the near relatives and friends of the accused should not be permitted to be in attendance upon the trial for the purpose of seeing that the accused is fairly and justly dealt with by the officers of the court and not improperly condemned. In the case of People *v.* Hartman, 103 Cal. 243, 37 Pac. 154, 42 Am. St. Rep. 108, the same question as here considered was before the Supreme Court of California under a constitutional provision like our own. The right to a public trial had been denied the defendant. Mr. Justice Garoutte, who wrote the opinion, in commenting upon the procedure of the trial court, said:

'This was a novel procedure, and has no justification in the law of modern times. We know of no case decided in this country supporting the course of procedure here pursued. It is in direct violation of that provision of the Constitution which says that a party accused of a crime has a right to a public trial. The fact that the officers of the court were allowed to be present in no way made the trial public.

For the purposes contemplated by the provision of the Constitution, the presence of the officers of the court, men whom, it is safe to say, were under the influence of the court, made the trial no more public than if they too had been excluded. While a right to the public trial contemplated by the Constitution does not require of courts unreasonable and impossible things, as that all persons have an absolute right to be present and witness the court's proceeding, regardless of the convenience of the court and the due and orderly conduct of the trial, yet this provision must have a fair and reasonable construction in the interest of the person accused. Judge Cooley, in his work upon Constitutional Limitations, p. 383, has well declared the true rule in the following language: "The requirement of a public trial is for the benefit of the accused; that the public may see that he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility, and to the importance of their functions; and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn hither by a prurient curiosity, are excluded altogether." '

"To the same effect see: State *v.* Hensley, 75 Ohio St. 225, 79 N. E. 462, 9 L. R. A. (N. S.) 277, 116 Am. St. Rep. 734, 9 Ann. Cas. 108; People *v.* Letoile, 31 Cal. App. 166, 159 Pac. 1057; State *v.* Osborne, 54 Or. 289, 103 Pac. 62, 20 Ann. Cas. 627; Rhodes *v.* State, 102 Neb. 750, 169 N. W. 433; People *v.* Yeager, 113 Mich. 228, 71 N. W. 491; 8 R. C. L. § 30, p. 76. We are not aware of any case in which the precise question now under consideration has been before this court. However, in the case of State *v.* Mannion, 19 Utah, 505, 57 Pac. 542, 45 L. R. A. 638, 75 Am. St. Rep. 753, where the question of the constitutional right of the accused to be confronted with the witnesses against him was involved, Mr. Justice Miner, the writer of the opinion, in speaking of the rights guaranteed the accused by our Constitution (article 1, § 12), said: 'By our Constitution it is clearly made manifest that no man shall be tried and condemned in secret, and unheard.' So, too, we think, the constitutional right to a public trial is equally sacred and may not be infringed upon by excluding 'all persons' from the courtroom except those connected with the case, exclusive of witnesses, as was done by the trial court's order in the present case.

"It is, however, contended on the part of the state that there is no showing made on the part of the defendant that he was prejudiced by the act of the court in denying him a public trial. We do not think it is incumbent upon the defendant to point out wherein he was prejudiced. Having been denied a public trial within the meaning of our Constitutin, the law presumes that the act of the court was

prejudicial. People *v.* Hartman, supra; State *v.* Hensley, 75 Ohio St. 255, 79 N. E. 462, 9 L. R. A. (N. S.) 277, 116 Am. St. Rep. 734, 9 Ann. Cas. 108."

Homicide—Self Defence—Duty to Retreat.—In Brown *v.* United States, 41 Sup. Ct. 501, the Supreme Court of the United States held that the failure of one killing another to retreat is a circumstance to be considered with all others in determining whether he went farther than he was justified in doing, but is not categorical proof of guilt, and it was error to charge that a party assaulted was always under the obligation to retreat so long as retreat was open to him provided he could do so without danger, and that unless retreat would have appeared to a man of reasonable prudence in defendant's position as involving danger he was not entitled to stand his ground, especially where defendant was at a place where he was called to be in the discharge of his duty in superintending excavation work.

The court said in part: "There had been trouble between Hermis and the defendant for a long time. There was evidence that Hermis had twice assaulted the defendant with a knife and had made threats communicated to the defendant that the next time, one of them would go off in a black box. On the day in question the defendant was at the place above mentioned superintending excavation work for a postoffice. In view of Hermis's threats he had taken a pistol with him and had laid it in his coat upon a dump. Hermis was driven up by a witness, in a cart to be loaded, and the defendant said that certain earth was not to be removed, whereupon Hermis came toward him, the defendant says, with a knife. The defendant retreated some twenty or twenty-five feet to where his coat was and got his pistol. Hermis was striking at him and the defendant fired four shots and killed him. The judge instructed the jury among other things that "it is necessary to remember, in considering the question of self defence, that the party assaulted is always under the obligation to retreat so long as retreat is open to him, provided that he can do so without subjecting himself to the danger of death or great bodily harm." The instruction was reinforced by the further intimation that unless "retreat would have appeared to a man of reasonable prudence, in the position of the defendant, as involving danger of death or serious bodily harm" the defendant was not entitled to stand his ground. An instruction to the effect that if the defendant had reasonable grounds of apprehension that he was in danger of losing his life or of suffering serious bodily harm from Hermis he was not bound to retreat was refused. So the question is brought out with sufficient clearness whether the formula laid down by the Court and often repeated by the ancient law is adequate to the protection of the defendant's rights.

"It is useless to go into the developments of the law from the